# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1949.

No.

UNITED MINE WORKERS OF AMERICA
and
UNITED MINE WORKERS OF AMERICA, DISTRICT 19,
Petitioners,

v.

OSBORNE MINING COMPANY, INC.

## PETITION FOR WRIT OF CERTIORARI

**To the United States Court of Appeals for the Sixth Circuit.**


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# SUPREME COURT OF THE UNITED STATES.

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v.

OSBORNE MINING COMPANY, INC.

## PETITION FOR WRIT OF CERTIORARI
**To the United States Court of Appeals for the Sixth Circuit.**

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioners, United Mine Workers of America and United Mine Workers of America, District 19 (herein called UMW and District 19), pray that a writ of certiorari issue to review the judgment (A. 117)[1] of the United States Court of Appeals for the Sixth Circuit[2] entered in this case on June 7, 1960, wherein said Court affirmed the

[1] Abbreviation "A" refers to the Appendix to this Petition.

[2] The United States Court of Appeals for the Sixth Circuit will be referred to herein as either the "Court of Appeals" or "Sixth Circuit."

judgment of the United States District Court for the Eastern District of Tennessee, Northern Division,[3] entered February 9, 1959. The judgment in the District Court made an award to Osborne Mining Company, Inc., against the petitioners in the sum of Two Hundred Fifteen Thousand Dollars ($215,000.00), with costs, the award consisting of One Hundred Sixty Five Thousand Dollars ($165,000.00) as compensatory damages and Fifty Thousand Dollars ($50,000.00) as punitive damages (A. 93; R. IV 1767).[4]

A certified appendix record in said case, together with the proceedings in the Sixth Circuit, is furnished herewith in accordance with this Court's rules.

## OPINION BELOW.

The opinion of the Court of Appeals appears in the Appendix hereto at page 95 et seq.; in the certified record (Certified Record Volume) and it is reported in ... F. 2d ... (Adv. Op. .... 1960).

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[3] The United States District Court for the Eastern District of Tennessee, Northern Division, is referred to herein as the "District Court."

[4] The abbreviation "R" refers to the printed, certified record of the Sixth Circuit filed in the Supreme Court of the United States. The Roman numeral following the abbreviation "R" indicates the volume of the record in which the page reference may be found. The certified record consists of seven volumes. Volumes I through IV consist of the printed appendix to the briefs of the petitioners on their appeal to the Court of Appeals. Two unnumbered volumes constitute the printed appendix of Osborne Mining Company, Inc. on its appeal. One of the volumes constitutes Osborne's main brief, with an appendix following the brief. The other volume is entitled "Appendix to Briefs on Behalf of Plaintiffs-Appellants." Because these volumes are unnumbered reference thereto is preceded by the prefix, "OMC." The seventh volume is entitled "Certified Record on Petition for Writ of Certiorari," which volume contains the proceedings in the United States Court of Appeals for the Sixth Circuit. Reference thereto is preceded by the prefix "CR."

## JURISDICTION.

The judgment of the Court of Appeals which affirmed the judgment rendered by the District Court was entered June 7, 1960 (A. 117). The jurisdiction of this Court to review by writ of certiorari the judgment of said Court of Appeals is invoked under the provisions of 28 U. S. C., Sections 1254 (1) and 2101 (e).

## BASIS FOR FEDERAL JURISDICTION IN THE UNITED STATES DISTRICT COURT.

The basis for jurisdiction in the District Court was the Labor Management Relations Act, 1947, 29 U. S. C., Section 141 et seq., and particularly Sections 187 (a) (1) and (2) and 187 (b)[3] of said Act.

## QUESTIONS PRESENTED.

1. Where an employer held the exclusive right to mine coal from certain lands and undertook to mine coal therefrom by strip mining operations on its own part and by underground mining on the part of its "sublessees" of small tracts of the employer's lands, the coal from both strip and underground operations being hauled to the employer's preparation and loading yard by trucks with drivers engaged by the employer or the sublessees on a "contract" basis, and where the sublessees and truckers were economically integrated with and subservient to the employer, may the employer's contention that a labor union induced a federally condemned secondary boycott be sustained on the theory that the sublessees and their employees and the truckers were "other" or "neutral" employers, or the employees thereof, under Section 303 of the Act (29 U. S. C., Sec. 187)?

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[3] The Labor Management Relations Act, 1947, will be referred to herein as the "Taft-Hartley Act" or as the "Act."

2. In an action against a labor union for damages claimed to have resulted from a labor dispute, wherein jurisdiction of the District Court was invoked under Section 303 of the Act (29 U. S. C., Section 187), and wherein the employer contended that certain actions which occurred during the dispute constituted violations of said Section 303 on the part of a labor union and that the entire dispute and the course of conduct of the labor union relative thereto constituted an unlawful interference with the employer's business under the common law of Tennessee, did the District Court have jurisdiction to determine liability under the common law or non-federal cause of action?

3. In an action against a labor union for damages claimed to have been sustained in a labor dispute, may liability of the union be predicated under Section 303 of the Taft-Hartley Act or under the common law of Tennessee, on acts not shown to have been the acts of an agent of the union or on acts committed by persons unknown, which the Court found were "inspired" by union activities?

## STATUTES INVOLVED.

The statutory provisions involved are Section 303, Labor-Management Relations Act, 1947 [29 U. S. C. 187, 61 Stat. 158 (a) (1) and (2)][6], and Section 6 of the Norris-LaGuardia Act (29 U. S. C. 106, 47 Stat. 71). These statutory provisions are set forth in Appendix IV hereto.

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[6] This reference is to Section 303 of the Labor-Management Relations Act, 1947, prior to amendment thereof by Section 704 (c) of the Labor-Management Reporting and Disclosure Act of 1959 (Pub. L. 86-257, title VII, Sec. 704 (c), 73 Stat. 545, 29 U. S. C. Sec. 187). All references to "Section 303" of the Act, except where otherwise indicated are to the Act prior to the 1959 amendment.

## STATEMENT OF THE CASE.

### 1. Kind of Action and the Judgment.

Osborne Mining Company filed this action in the District Court charging that the UMW and District 19 had violated Section 303 of the Labor-Management Relations Act, 1947, and also the common law of Tennessee, in their efforts to organize Osborne Mining Company's employees in 1954 and 1955 (OMC 36-48).[7] The UMW and District 19 moved to dismiss the complaint on several grounds, including the grounds that the complaint failed to state a cause of action under Section 303 and that the Court was without jurisdiction of the common law cause of action, but this motion was overruled (OMC 33-35). Defenses made by the UMW and District 19 denied the complaint's material allegations and asserted the defenses indicated in the questions here presented (OMC 48-53).

The case was tried before the District Judge without a jury. Findings of Fact and Conclusions of Law were filed directing entry of judgment for Osborne Mining Company for compensatory damages in the amount of $165,000.00 and for punitive damages in the amount of $50,000.00 (A. 87, 92). This judgment was affirmed by the Court of Appeals (A. 117).[8]

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[7] This reference is to the printed appendix filed on the Osborne appeal. *See* footnote 4

[8] The Osborne case was tried together with a case which resulted from the same facts, *Loyce and Amos Coal Company v. United Mine Workers of America et al.*, Civil No. 3167, U. S. District Court, Eastern District of Tennessee, Northern Division. The *Loyce and Amos* case resulted in a judgment for the plaintiff in the amount of $35,000.00 (R. IV 1765). Upon appeal the judgment of the District Court was set aside with instructions to the District Court to dismiss the complaint for lack of jurisdiction (A. 116-117).

2. **The Material Facts, the Issues and the Decision of the Courts Below.**

Osborne Mining Company (herein sometimes referred to as Osborne) acquired the right to mine coal from two tracts of land located in Whitley County, Kentucky (Finding 16, A. 52).[9] It undertook, from July, 1954, through October, 1956, to mine coal from these lands by two methods; that is, by contour strip mining, which was carried on through Osborne's regular employees, and by a number of small underground mines which Osborne subleased to others and in which work was performed by the sublessees and persons employed by the sublessees (Findings 7, 25 and 36; A. 48, 55, 60). All or virtually all of the coal produced at the strip and underground mines was hauled to the Osborne preparation and loading yard in nearby Jellico, Tennessee, by trucks hired by Osborne or the sublessees on a contract basis (Finding 38, A. 61). Osborne contemplated the fulfillment of its contractual obligations for the sale of coal to the Tennessee Valley Authority and others from the combined production of the strip and underground mining operations (Finding 25, A. 55; R. I 43-44).

The Court of Appeals found that UMW and District 19 induced the sublessees and their employees and the truckers "to engage in a concerted refusal to mine and haul coal, the objective being to force Osborne to bargain with UMW as the representative of its employees" (A. 103).

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[9] The District Court's Findings of Fact consist of 124 findings, which are set forth in Appendix I hereto; these are also found in the Osborne appendix, beginning at 60a.

(a) **The factual basis for the determination that the sublessee mine operators and the truck owners were neutral or secondary employers under Section 303.**

Petitioners contend that because of the complete interdependence and integration of the operations of Osborne, the sublessee mine operators and the truckers, and because of the position of economic dominance occupied by Osborne, neither the sublessee mine operators nor the truckers were "neutral" or "secondary" employers, and therefore that inducement of them and of their employees to concerted action was not violative of the Act's Section 303. This contention was denied in both courts below. The District Court and the Court of Appeals reasoned that under the definition of the word "employee", as revised in the Taft-Hartley Act, 29 U. S. C., Section 152 (3),[10] the sublessee mine operators and the truckers were not Osborne employees, but were independent contractors; and, a fortiori, they were "neutral" or "secondary" employers (A. 105-106).

The evidence and the findings of the District Court regarding the sublessee mine operators and the truckers are summarized in the following paragraphs.

The sublessee mines were operated on small tracts approximately 300 feet in width along a seam of coal exposed by the Osborne contour strip mining (Finding 36, A. 60; R. I 283-287; R. II 680). Openings were driven into the coal and into an abandoned conventional type underground mine. The mining carried on was by the sublessee and about four or five men in a primitive manner. Equipment used therein ordinarily consisted of wooden or steel rails, wooden ties, hand operated drills, and mine cars pushed by hand or occasionally pulled by mule (Findings 40, 41; A. 62).

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[10] This provision of the Act is set forth in Appendix IV to this petition.

The tracts were sublet by written instruments, terminable on 30 days notice, requiring sublessee to diligently operate the mine, keep accurate records, comply with applicable law and hold Osborne harmless. The agreement expressly contemplated the employment of employees by the sublessee. The agreement contained no provision for the distribution of the coal to be mined thereunder but it was the understanding and practice of the sublessees that such coal was to be trucked to Osborne's tipple where it would be purchased by Osborne (Findings 37, 38; A. 61).

Osborne paid about $2.90 per ton of coal delivered in Jellico. Delivery costs and other expenses left about $1.50 per ton for division among the sublessee and his employees (Findings 38, 39; A. 61-62; R. IV 1809). No accurate records are available to show the average production of these mines, but public records pertaining to such mines in the area establish an average production of 3.9 tons per man per day (Finding 42, A. 62; R. III 1585). The District Court found that earnings of workers in these mines were "not much more than living wages and in some instances hardly as much as living wages" (Finding 40, A. 62).

Coal hauled from the small mines operated by the sublessees to the Osborne loading yard was ordinarily hauled by truck drivers who owned their own trucks. They were engaged and paid by the sublessees on the basis of a stipulated amount per ton (R. I 522).

Coal strip mined by Osborne was trucked to Osborne's Jellico loading yard by drivers who owned their own trucks, though in some instances truck owners who did this hauling owned more than one truck and would hire drivers for the additional trucks (R. I 378, 571). Drivers owning trucks were paid on a tonnage basis (which was determined by the distance from the tipple to the mining operation) out of which they paid their own expenses for

fuel, repairs and the like. Drivers who drove trucks owned by other truck drivers were paid on a trip basis by the owner (R. I 351, 579).[11] Osborne did not have written agreements with the truckers, who were engaged on an indefinite basis (R. I 364). The drivers' work consisted simply of driving the trucks from five to ten miles back and forth from the strip mine to the loading yard, and was of necessity regulated by the day-to-day requirements of the operation (R. I 396, 477, 579).

A significant indicant of the relationship of Osborne, the sublessees and the truckers is found in their joint maintenance of the haul roads in the mountain area wherein Osborne and the sublessees mined coal. These roads were covered, from time to time, with slate loaded into trucks by Osborne mining employees, was delivered to the road by the truckers and was spread on the road by the sublessees and their helpers. No additional compensation was received by the truckers or the sublessees and their helpers for this work (R. I 393-396, 478-479, 517, 601; R. III 1442-1443).

The Court of Appeals, as previously stated, regarded the status of the sublessees and the truckers to Osborne as one of independent contractor and as determinative of whether the inducement to concerted action on the part of the sublessees and the truckers and their employees was violative of Section 303. It did not comment extensively on the relationship existing between them, merely noting that "there was no common ownership between Osborne and the sublessee mine operators and the truck owners, and that Osborne did not control them or their

[11] The closeness of the relationship of Osborne and the truckers is indicated by the fact that many of the truck drivers, including many of the so-called independent truck owners, received a Christmas check from Osborne in the same manner and amount as the Christmas bonus paid by Osborne to its mining employees (R. II 1224; R. III 1661-1663).

employees" (A. 98). The Court of Appeals also noted that under the National Labor Relations Act's definition of "employee", prior to Taft-Hartley revision,[12] both the sublessee miners and the truckers would have been regarded as Osborne employees (A. 105).[13] However, the Court did not consider whether despite Taft-Hartley revision, the sublessee miners and the truckers were non-neutral employers under Section 303.

**(b) The determination that the District Court had jurisdiction of the common law or non-federal cause of action.**

Petitioners contended below that because there was no diversity of citizenship the District Court was without

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[12] 49 Stat. 450 (3).

[13] The Court of Appeals cited in this connection *Matter of A. V. Greene*, 49 N. L. R. B. 146, a decision made under the National Labor Relations Act prior to the 1947 Taft-Hartley revision. In the *Greene* case it appeared that District 50 sought to be certified as representative of a group of miners and truckers operating under circumstances strikingly comparable to those of the sublessees and truckers in the instant case. In holding, after a full recital of the facts, that the miners (including the sublessees themselves) and the truckers were employees of the lessee who as Osborne herein purchased the coal produced, and in directing an election, the Board said:

> "In effect, the Company argues that it has nothing to do with the mining of the coal at the Mines except to receive and sell the coal which is extracted. However, if these Lessees were 'independent contractors,' we would have a whole battalion of contractors working for the same employer at the place of business and furnishing him with a personnel without which he could not operate. The Company exercises all the control over the miners and haulers that is required for the purpose of its business and the protection of its property interests. The Lessees, other miners, and haulers, constitute a labor force which extracts the coal and conveys it to the Tipple from whence it is shipped. The Board's policy has been to include within the coverage of the Act workers or wage earners who e livelihood depends on a continuing association with an enterprise, and we have been guided by the factual character of the relationship rather than by the surface arrangements of lessor, lessee, or 'independent contract' . . .

jurisdiction to determine the common law cause of action. The District Court rejected this contention. It held that the common law cause of action had been established and awarded damages, both compensatory and punitive, thereunder. The theory of the District Court, subsequently approved by the Court of Appeals, was that the material facts which supported the claim of secondary boycott under Section 303 also supported the common law cause of action and that the federal and non-federal claims were not separate causes of action but were merely different grounds of a single cause of action. Reasoning thusly, and citing **United Mine Workers of America v. Meadow Creek Coal Company**, 263 F. 2d 52 (6th Cir. 1959), cert. denied 359 U. S. 1013 (1959), the Courts below found that the doctrine of ancillary or pendent jurisdiction enunciated in **Hurn v. Oursler**, 289 U. S. 238 (1933), was applicable and accordingly that a basis for the exercise of jurisdiction over the common law cause of action existed (A. 106).

Essentially, the facts as found are that by various forms of inducement directed to Osborne's employees and others, including acts of violence and threats of violence, the UMW and District 19 interfered with Osborne's business by causing the curtailment of the strip mining operations of Osborne and the underground mining operations of the sublessee operators who sold coal to Osborne; and by causing an interruption of the trucking of coal from the Osborne and the sublessee mines to the Osborne tipple.

The facts pertaining to the inducement are fully set forth in the District Court's Findings of Fact, particularly Findings 27 through 86 (A. 56-76), and are adequately summarized in the opinion of the Court of Appeals (A. 95). For the purpose of the question here posed regarding the jurisdiction of the District Court to determine liability under the Tennessee common law we deem it unnecessary to restate these facts in this petition in any detail. We note,

however, that the acts found to be tortious were catalogued by the District Court as "primary" where such acts, as found, were "directly against Osborne Mining Company's own officials and employees" (Finding 110, A. 83) and "secondary" where the acts were found to be intended "to induce or persuade the secondary employees," i. e., the sublessees and their employees and the truckers (Finding 112, A. 84).

The District Court also found that the acts complained of were designed "to induce the closing down of the non-union mines and the concerted stopping of mining and hauling of coal from those operations" (Finding 60, A. 68); and that the acts "caused all of them (primary and secondary employees) to stop working for a period of several days" (Finding 61, A. 69).

The acts referred to generally in the above quotations from the Findings of Fact specifically relate to warnings given to Osborne mining employees while at work at the strip mine (Finding 27, A. 56); interference by threats with the unloading of trucks at the Jellico tipple (Finding 28, A. 56); the issuance of warrants for the arrest of drivers under circumstances indicating there was no basis therefor (Finding 29, A. 58); the assault of a trucker delivering coal to the Osborne tipple (Finding 48, A. 64); the assault of non-union operators in the area, which though unconnected with Osborne and the sublessee operators, was found to have caused fear in the minds of the Osborne employees and the sublessees (Findings 49-51, A. 64-65); the gathering of large groups of union men on the streets of Jellico (Finding 59, A. 68); the scattering of nails on the haul roads (Finding 63, A. 69); the firing of shots into the stripping pits where Osborne's men were at work (Finding 72, A. 72); and the burning of haystacks near the stripping operation and the display of mysterious lights in the woods nearby (Finding 73, A. 73).

The Court of Appeals found that the acts "were so interrelated that except in a very few instances it would be virtually impossible to separate those directed against a primary as distinguished from a secondary party." And continuing, the Court further said that "the primary activities could certainly not be regarded as an efficient intervening cause which would operate to relieve the defendants of responsibility for the full damage caused by their violation of federal law" (A. 106).

**(c) The factual basis for the determination that the UMW and District 19 were responsible for certain acts which occurred.**

As indicated in the preceding section of this petition, a number of acts occurred which were held to have been violative of Section 303 of the Act and of the common law of Tennessee. Many of these acts were attributed to the UMW and District 19 in the absence of evidence relating them to agents of the petitioners or, in several instances, to members of the petitioners. We refer specifically to the matters set forth in the following paragraphs.

In July of 1954 a number of warrants were served on drivers hauling coal to the Osborne tipple charging them with operating with improper equipment and resulting in their arrest. Upon hearing, the charges were dismissed. These warrants were served by a deputy sheriff who was a UMW member and a retired coal miner. The District Court held that the swearing out of the warrants constituted a "serious abuse of legal process" and that the issuance thereof was "inspired by union **activities**," although there was no evidence of union inducement and even though union inducement was denied by the deputy sheriff (Finding 29, A. 58, R. III, 1645-1653). This conclusion was affirmed by the Court of Appeals (A. 100).

Finding of Fact 63 (A. 69), kindred in approach, is as follows:

"During April, 1955 and for months thereafter, there were repeated instances in which large numbers of nails were found on the roads used by the trucks hauling the Osborne coal and which roads were also used by miners going to the underground mines and the strip pits as they went to and from work. The scattering of nails on the road was inspired by **union activities** of the International and its members." (Emphasis supplied.)

There is no evidence in the record identifying any individual as being responsible for the acts referred to in this finding. The Court of Appeals nevertheless affirmed the District Court's action in predicating liability of the petitioners thereon (A. 103).

Findings of Fact 72 and 73 (A. 72-73) are also similar:

"(72) On July 14, 1955, at approximately 11:00 p. m. while the night shift of the stripping crew was operating, rifle shots began to rain down among the men. The stripping operation was lighted by lights on the shovels. The shots came from the darkness across a ravine. Approximately 100 rounds of ammunition were fired into the pit. The cabs of the shovels were struck by a number of bullets which came within a few feet of the men operating the shovels. One man was hit by a bullet.

"(73) In the following months of the fall of 1955 and in the spring of 1956, there were other efforts to intimidate the truck drivers and the stripping crews. These included the burning of haystacks in close proximity of the property being stripped at night in plain sight of the stripping crew; the shooting at a lone guard at the stripping pits; the displaying of mysterious lights in the woods around the pits, and scattering of nails in the road."

None of these acts are connected in the record with any evidence relating them to the union or, indeed, to any individual or group of individuals. The Court of Appeals, without comment on the absence of connecting evidence, expressly based, in part, its affirmance of the District Court's judgment on these acts (A. 104, 107-108).

## REASONS FOR GRANTING THE WRIT.

### I.

In an action by an employer against a labor union for damages under the Act's Section 303, the Court of Appeals has erroneously limited itself to the technical meaning of the legal term "independent contractor" in holding that one employer is a "neutral" with regard to a dispute of another employer without consideration for or regard to the economic circumstances relating and joining the two employers. The Court of Appeals has thus decided an important Federal question involving the scope of condemnation of the secondary boycott provisions of said Section 303 and has decided such question in a manner totally discordant with Congressional intent in the enactment of said statute and in conflict with the decision of the Court of Appeals for the District of Columbia in **Local 24, International Brotherhood of Teamsters, v. N. L. R. B.**, 265 F. 2d 675 (1959).

In its holding that the sublessee mine operators and the contract truckers were "other" employers under Section 303, and at the same time finding that their relationship to Osborne Mining Company was so immediate that, under the Wagner Act, the sublessees, as well as their employees and the truckers, would have been regarded as Osborne employees, the Court of Appeals ignored the explicit intention of Congress in enacting Section 303. While Congress was there "concerned with reshaping labor manage-

ment legal relations," **International Longshoremen's Union v. Juneau Spruce Corp.**, 342 U. S. 237; 241, advocates of stature made it clear that the shield of Section 303 was intended to protect employers "wholly unconcerned"[14] in a particular dispute and not an employer "acting as a part of the primary employer."[15]

These statements of Congressional intent were made with regard to situations far less striking than the situation here under consideration, for here the sublessees and their employees and the truckers were as much a vital part of Osborne's plan for the mining and marketing of coal from his property as was any laborer or shovel operator in Osborne's immediate employ. Moreover, they were as dependent upon Osborne as was any Osborne employee, as elemental economic considerations plainly indicate. Curiously, as we think, the Sixth Circuit, while it gave no meaning to these facts, gave recognition to them, by its citation of **Matter of A. M. Greene**, 49 N. L. R. B. 146, wherein the Board found (p. 149) under identical facts that the dominant company exercised "all the control over the miners and haulers that is required for the purpose

[14] During the debate on Section 303 Senator Taft explained that the provision "makes it unlawful to resort to a secondary boycott to injure the business of a third person *who is wholly unconcerned* in the disagreement between the employer and his employees." (93 Cong. Rec. 4323; emphasis ours.)

[15] Senator Taft was questioned as to the application of the provision in a situation where a dress manufacturer has his cut goods sent to contractors whose workers sew and complete the dresses according to the manufacturer's specifications, with the dresses then returned to the manufacturer for sale. Senator Taft reasoned that the provision would have no application. He said (93 Cong. Rec. 4200):

> "Mr. President, the secondary boycott ban is merely intended to prevent a union from injuring a third person who is not involved in any way in the dispute or strike, and, therefore, should not suffer economic damage simply because of the action of a labor union. It is not intended to apply to a case where the third party is, *in effect in cahoots with or acting as a part of the primary employer.*" (Emphasis ours.)

of its business and the protection of its property interests."

Petitioners recognize fully that the 1947 amendments to the National Labor Relations Act narrowed the definition of the term "employee" as it was construed in the **Greene** case and later by this Court in **N. L. R. B. v. Hearst Publications, Inc.**, 322 U. S. 111 (1944), and it is likely that by reason of the revision, the National Labor Relations Board would not now direct an election in which the sublessees and their employees and the truckers would be found eligible to vote as employees of Osborne. See **Matter of Whaley Coal Company**, 124 N. L. R. B. No. 156 (1959). Statements of Senator Taft (See footnotes 14 and 15 on page 16) that an employer acting "as a part of the primary employer" is not a neutral employer under Section 303 reflect clearly that Congressional revision above noted was not intended to be determinative of a secondary boycott situation of the kind present in the instant situation. That this is true is further emphasized by the holding of the District of Columbia Circuit in **Local 24, International Brotherhood of Teamsters v. N. L. R. B.**, 266 F. 2d 675, discussed below.

Surely, if ever one employer is acting as a part of another employer (and not merely as a supplier or transporter for another employer in a normal business sense) that situation may be found in the relationship of the sublessee miners and the contract truckers to Osborne.

The problems created by twilight relationships are numerous but not new and have manifested themselves in law in many ways. See Jacobs, **Are "Independent Contractors" Really Independent?** 3 De Paul L. Rev. 23 (1953). These problems are of great importance not only to the coal industry but to industry generally. Early cases often involved the equivalent of today's workmen's compensation laws. In **Lehigh Valley Coal Co. v. Yen-**

**savage**, 218 F. 547 (2nd Cir., 1914) Judge Learned Hand found that such a statute protected a coal miner not unlike the sublessees here, saying (p. 552):

> ". . . He is himself as dependent upon the conditions of his employment as the company fixes them as are his helpers. By him alone is carried on the company's only business; he is their 'hand' if any one is. Because of the method of his pay one should not class him as though he came to do adjunctive work, not the business of the company, something whose conduct and management they had not undertaken. Such statutes * * * should be construed, not as theoreums of Euclid, but with some imagination of the purposes which lie behind them."

Legislation of the 1930's gave impetus to the problem observed in the **Yensavage** case, for legal history records many instances where employers destroyed the employment relationship to escape the obligation of collective bargaining, unemployment compensation, social security taxes, and minimum wage requirements. A notable illustration is found in **Angelos v. Meswich**, 289 N. Y. 498 (1943). In that case an employer, one week after a union began picketing, had his six employees sign articles of partnership and thus, because no employment relationship and hence no "labor dispute" existed, the employer was found entitled to an injunction. [Reversed on other grounds sub nom. **Cafeteria Employees Union v. Angelos**, 320 U. S. 293 (1943)]. Other illustrations are seen in **Bakery and Pastry Drivers v. Wohl**, 315 U. S. 769 (1942), wherein the right to picket a merchant utilizing independent peddlers was upheld despite the absence of a "labor dispute" which resulted from the conclusion that the peddlers were independent contractors; in **United States v. Silk**, 331 U. S. 704 (1947), wherein this Court dealt with questions arising concerning the applicability of the Social Security Act; and in the **Walling, Adm. v. Woodbine**

**Coal Company** case, 64 F. Supp. 82 (E. D. Ky., 1945), wherein coal miners comparable to those here involved were found entitled to recovery under the Fair Labor Standards Act against the lessor company which purchased the coal and operated the tipple.[16]

It is unnecessary to speculate on the reason which prompted Osborne Mining Company to elect to do business through persons held by the Court of Appeals to be engaged technically as independent contractors rather than through regular employees. Suffice it to say that Osborne, as many of the employers involved in the cases cited above, did so operate and in so doing welded together employees, sublessees and truckers alike to establish a **straight line** process for the production of coal.

The Court of Appeals for the District of Columbia in the very recent case of **Local 24, International Brotherhood of Teamsters v. N. L. R. B.**, 266 F. 2d 675 (1959), which involved a situation comparable to that here, gave full recognition to the view we insist is correct. In denying enforcement of the Board's order and in holding that the problem cannot be reached "by the use of any legalistic word or phrase, such as 'co-employer,' or 'independent contractor,' or even 'ally,'" the Court there ruled that truckers operating for a transportation company but as the employees of independent truck owners were not employees of a neutral employer.[17] Significantly, the Court

[16] The Wage and Hour Division of the U. S. Department of Labor investigated the Osborne Mining Company, Inc., operations under the Walsh-Healy Public Contracts Act and the Fair Labor Standards Act and found that certain employees in the sublessee mines had not been paid in accordance with the former act. Osborne Mining Company, Inc. made payment of the back pay found due (R. IV 17-9, 17-10).

[17] The *Teamsters* case here cited involved a charge of violation of Section 8 (b) (4) of the National Labor Relations Act. The section is couched in the same language as Section 303 and makes an unfair labor practice that which is actionable under Section 303

approved the following language of the trial examiner who had been reversed by the Board (page 680):

> "Rather, the Respondents (our petitioners) say, the businesses of the Lessors and ACE are so integrated operationally that for purposes of this proceeding they must be deemed either a single employer, a joint or common venture, a 'straight line' operation within the Board's understanding of that term, or an alliance of interest. The Respondents maintain that whichever term may best be used to describe the relationship among ACE and the Lessors, their business arrangements are such that in the Union's dispute with the Lessors or any one of them neither ACE nor any of the Lessors is so unconcerned therewith that it is statutorily shielded as a neutral from an extension of the dispute by the Union to its operations, and, therefore, the Union's picketing and inducement herein occurred at premises which in this proceeding should be regarded as primary and not secondary."

This decision is in total conflict with the decision here under consideration. The Sixth Circuit undertook to distinguish the instant case from the decision in the **Teamsters** case by finding (A. 105-106) that the "strands of control referred to in the **Teamsters** case were not present, and the evidence supports the findings of the trial judge as to the existence of the independent contractor relationship." The distinction made by the Sixth Circuit is not logical, however, and the error which the Court committed is at once apparent when its citation of **Matter of A. M. Greene**, 49 N. L. R. B. 146, is recalled. The difference between the decision in the case at bar and the decision in the **Teamsters** case is one of concept. The Sixth Circuit held that the question turned on a determination of the status of independent contractor; the Court of Appeals for

the District of Columbia, with appreciation of the purpose of the statute, hold that it did not.

It is evident, from the foregoing that the Court of Appeals has given effect to an important federal statute in a manner totally inconsistent with Congressional intention, that its action is in conflict with the guiding principles expressed in a comparable decision by the Court of Appeals for the District of Columbia, and that its decision presents an important federal question in the administration of the Act, which has not been, but should be, settled by this Court.

II.

The conclusion of the Court of Appeals that the District Court had jurisdiction of the non-federal common law claim which was joined with the claim under the Act's Section 303 on the theory that the two claims were supported largely by the same facts and that the two claims were merely different grounds of a single cause of action, presents an important federal question in the field of labor law with regard to the application of the doctrine of ancillary or pendent jurisdiction. The determination of this question by the Court of Appeals is in conflict with Congressional intent in the enactment of Section 303 and it is in conflict with the decision of the Fourth Circuit in **United Mine Workers of America v. Patton**, 211 F. 2d 742 (4th Cir., 1954). The question has not been, but should be, settled by this Court.

The case at bar is the second case in which the Sixth Circuit has applied the doctrine of ancillary jurisdiction where jurisdiction of the District Court has been invoked under Section 303. In the first case, as well as in the present case, the Sixth Circuit affirmed a most substantial judgment for compensatory and punitive damages based on state law. **United Mine Workers of America v.**

**Meadow Creek Coal Company**, 263 F. 2d 52 (6th Cir., 1959), cert. denied 359 U. S. 1013 (1959).

The importance of the question hardly can be overstated. Since final determination of the **Meadow Creek** case, and since the decision of the District Court was announced in this case, some twenty-five suits have been filed and are presently pending against the UMW in the federal courts of Tennessee, Kentucky and Virginia, all on the Meadow Creek-Osborne Mining Company jurisdictional pattern. These twenty-five suits involve claims totalling over $24,000,000.00, more than $11,000,000.00 of which is asserted for punitive damages.[18]

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[18] *White Oak Coal Corp., Inc.* and *Arnold Coal Company v. UMWA*, Civil No. 4028, E. D. Tenn., Northern Div., Filed March 2, 1959. Claim: $1,850,000.00 compensatory; $750,000.00 punitive. *William G. Gilchrist, Jr. et al. d/b/a Gilchrist & Sons and G. & G. Coal Co. v. UMWA*, Civil No. 3866, E. D. Tenn., Northern Div. Filed June 22, 1959. Claim: $1,700,000.00 compensatory; $1,100,000.00 punitive. *Snyder & Randolph, Inc. v. UMWA*, Civil No. 3867, E. D. Tenn., Northern Div., Filed June 22, 1959. Claim: $1,000,000.00 compensatory; $500,000.00 punitive. *C. M. Murray and W. H. Murray, d/b/a Mary Ann Coal Company v. UMWA*, Civil No. ..... W. D. Va., Filed April 7, 1960. Claim: $150,000.00 compensatory and punitive. *Elaine Coal Company, Co-Dee Coal Company, and Amanda Coal Company v. UMWA*, Civil No. 555, E. D. Ky., Pikeville, Filed June 23, 1959. Claim: $361,000.00 compensatory; $350,000.00 punitive. *Camp Fork Coal Company v. UMWA*, Civil No. 556, E. D. Ky., Pikeville, Filed June 23, 1959. Claim: $50,000.00 compensatory; $50,000.00 punitive. *Gem Elkhorn Coal Co. and K. & F. Coal Co. v. UMWA*, Civil No. 557, E. D. Ky., Pikeville, Filed June 23, 1959. Claim: $330,000.00 compensatory; $330,000.00 punitive. *Blackey Gem Coal Company v. UMWA*, Civil No. 558, E. D. Ky., Pikeville, Filed June 23, 1959. Claim: $55,200.00 compensatory; $50,000.00 punitive. *E. P. Price, C. H. Kelly and Wallace Fields, Partners d/b/a Elkhorn Coal Company v. UMWA*, Civil No. 559, E. D. Ky., Pikeville, Filed June 23, 1959. Claim: $1,008,000.00 compensatory, $1,000,000.00 punitive. *Isom Coal Company, Inc. v. UMWA*, Civil No. 563, E. D. Ky., Pikeville, Filed July 28, 1959. Claim: $10,000.00 compensatory; $212,000.00 punitive. *Adams Coals, Inc. v. UMWA*, Civil No. 507, E. D. Ky., Pikeville, Filed August 4, 1959. Claim: $115,000.00 compensatory; $100,000.00 punitive. *Adams Brothers Coal Co. v. UMWA*, Civil No. 508, E. D. Ky., Pikeville, Filed August 4, 1959. Claim: $35,000.00 compensatory

Indeed, even while this petition was being written, the District Court for the Eastern District of Tennessee, Northern Division, has rendered judgment against the UMW in two of these cases, tried together, for a total of $479,000,00, of which $119,000,00 is for punitive damages:[19]

$35,000,00 punitive; *Cane Creek Fuel Company, Inc. v. UMW*, Civil No. 560, E. D. Ky., Pikeville, Filed August 4, 1950. Claim: $28,000,00, compensatory; $28,000,00 punitive; *Little Shepherd Coal Co. v. UMW*, Civil No. 570, E. D. Ky., Pikeville, Filed August 4, 1950. Claim: $88,000,00 compensatory; $88,000,00 punitive; *Elk Coal Co. and No. 4 Coal Co. v. Same*, Civil No. 571, E. D. Ky., Pikeville, Filed August 4, 1950. Claim: $5,000,00 compensatory; $5,000,00 punitive; *Eagle Block and Jack H. Block v. Same*, Civil No. 572, E. D. Ky., Pikeville, Filed August 12, 1950. Claim: $[illegible] compensatory; *Neal D. Lucas, Marcella B. Kelly, Sr., Ben Estes, Ben Estes, Jr., and Sue Bradshaw, Partners d/b/a Lucas Coal Co. v. UMW*, Civil No. 575, E. D. Ky., Pikeville, Filed August 17, 1950. Claim: $154,000,00 compensatory; $[illegible] punitive; *Elk Coal Co. v. Same*, Civil No. 585, E. D. Ky., Pikeville, Filed October 6, 1950. Claim: $213,000,00 compensatory; $75,000,00 punitive; *Smith, Hall and Gilbert Coal Co. v. UMW*, Civil No. 284, E. D. Ky., Jackson, Filed December 1950. Claim: $[illegible] compensatory; $[illegible] punitive; *Kentucky Coal Company, Inc. v. UMW*, Civil No. 286, E. D. Ky., Jackson, Filed October 23, 1950. Claim: $[illegible] compensatory; $[illegible] punitive; *Lucas Coal Co. v. UMW*, Civil No. [illegible], E. D. Ky., Jackson, Filed August 4, 1950. Claim: $[illegible] compensatory; $[illegible] punitive; *Nicholas Coal Co. v. UMW*, Civil No. 296, E. D. Ky., Jackson, Filed August 4, 1950. Claim: $[illegible] compensatory; $[illegible] punitive; *Island Creek Coal Company, Inc. v. UMW*, Civil No. 297, E. D. Ky., Jackson, Filed August 17, 1950. Claim: $[illegible] compensatory; $720,000,00 punitive; *United Fuel Co., Isaac Kincaid, Cora Clements, Edna K. Cook, Mary Lucas, Henry Kelly, and Sue Bradshaw, Partners d/b/a the Mingo Coal Company v. UMW*, Civil No. 298, E. D. Ky., Jackson, Filed August 17, 1950. Claim: $87,000,00 compensatory; $174,000,00 punitive; *Independent Mining Company, Inc. v. UMW*, Civil No. 299, E. D. Ky., Jackson, Filed August 17, 1950. Claim: $[illegible] compensatory; $1,300,000,00 punitive.

[19] *William L. Gilchrist, Inc. et al. v. United Mine Workers of America*, Civil No. 3866, E. D. Tenn., August 28, 1950; *Sanders and Randolph, Ltd. v. United Mine Workers of America*, Civil No. 3867, E. D. Tenn., August 3, 1950.

and a jury, in another of these cases being tried in the District Court for the Eastern District of Kentucky, has returned a verdict for $104,845.00, of which $50,000.00 is for punitive damages.[20]

The importance of the question is further seen in the fact that the staggering amounts of **punitive damages** awarded and claimed in these cases **could not be recovered under federal law.** Section 303 (b) provides only that a litigant "shall recover the damages by him sustained and the cost of the suit." This provision, so far as we are aware, has never been construed to permit the recovery of punitive damages; to the contrary, in an opinion written by the late Judge Parker it was held, **United Mine Workers of America v. Patton,** 211 F. 2d 742 (1954), that punitive damages cannot be recovered in an action under Section 303.

Practical considerations demonstrate that under the doctrine followed in the instant case, Section 303 is not important in a substantive way. However, it has effectively become a procedural devise for entry into federal court.

Congress did not intend Section 303 to be a device by which damage suits against labor organizations based on local law could be maintained in the federal courts. Legislative history manifests that Congress intended precisely the opposite that such suits were not to be maintained in the federal courts. This history shows that bills originally prepared and passed in the House would have vested in federal district courts jurisdiction to try damage actions based on virtually every conceivable form of interference arising in a labor dispute.[21] Congress, however, rejected

[20] *Elane Coal Company, et al. v. United Mine Workers of America*, Civil No. 555, E. D. Ky., July, 1960.

[21] Legislative History of the Labor Management Relations Act, 1947, Vol. I, pp. 158, 204. Section 12 of H. R. 3020, as passed by the House, is copied as Appendix III hereto.

this mode of regulation and adopted the far more narrow Section 303. Under this provision, as this Court stated in **Local 1976, United Brotherhood of Carpenters v. NLRB**, 357 U. S. 93 (1958), at page 99, a primary employer "with whom the union is principally at odds, has no absolute assurance that he will be free from the consequences" of union activity "by means other than those proscribed" in Section 303. The Sixth Circuit's decision in the present case renders meaningless the limited jurisdiction granted by Congress.

This Court's teaching in the **Carpenter** case is that Congress carved certain activities out of the total area of industrial conflict by condemning, in Section 303, "specific union conduct directed to specific objectives." The test of liability is whether there has been unlawful inducement and encouragement for a prohibited objective and, as stated, in **NLRB v. International Rice Milling Co.**, 341 U. S. 655, 672, "the violence . . . is not material"; and, while the element of violence may be used as a factor in showing that a union has committed an act prohibited by Section 303, it may not serve as a medium for the allowance of punitive damages which both legislative history and decisional law declare are not allowable under Section 303.

But if, as shown, Section 303 is permitted to serve as a procedural device under the doctrine of ancillary jurisdiction, then, once in court, the element of violence is used to show a non-federal, state common-law claim for interference with a plaintiff's business and used as a predicate for a punitive damage award, the purpose of Congress not to vest in federal courts the power to punish unions by punitive damage awards is completely thwarted. In **General Committee v. Missouri K. T. R. Co.**, 320 U. S. 323, 332, 333, quoted in **Amazon Cotton Mill Co. v. Textile Workers Union**, 167 F. 2d 183, 186, this Court, dealing with jurisdiction of federal courts in the labor relations field, said:

> "Congress has been highly selective in its use of legal machinery. . . . The inference is strong that Congress intended to go no further in its use of the processes of adjudication and litigation than the express provisions of the Act indicate."

If, as the Court of Appeals in the instant case has mandated, a state common-law action is permitted to be tried as pendent to an alleged violation of Section 303, then not only is the element of violence highlighted but serves as a vehicle for the award of punitive damages. Thus does pendent jurisdiction inflict in an action under Section 303, punishment against a labor union, contrary to Congressional intendment.

Petitioner does not here insist that an action under state law may not be maintained against a labor organization for conduct marked by violence and imminent threats to public order. **United Automobile Workers v. Russell**, 356 U. S. 634 (1958); **United Construction Workers v. Laburnum Corp.**, 347 U. S. 656 (1954); **San Diego Building Trades Council v. Garmon**, 359 U. S. 236 (1959). We do insist that such conduct, as it may or may not relate to the common law tort of interference, was not intended by Congress to be the concern of the federal judiciary in the absence of an independent basis for federal jurisdiction.

In litigation involving other federally-created causes of action with regard to which organized labor has been most emphatically concerned, this view has prevailed. In **Apex Hosiery Co. v. Leader**, 310 U. S. 469 (1940), an action based upon the Sherman Act which involved a strike marked by extreme public disorder, this Court rejected the contention that the federal courts had jurisdiction to determine the cause under state law. It said (p. 483):

> "It is not denied, and we assume for present purposes, that respondents . . . violated the civil and

penal laws of Pennsylvania which authorize the recovery of full compensation and impose criminal penalties for the wrongs done. **But in this suit, in which no diversity of citizenship of the parties is alleged or shown, the federal courts are without authority to enforce state laws. Their only jurisdiction is to vindicate such federal right as Congress has conferred on petitioner by the Sherman Act and violence, as will appear hereafter, however reprehensible, does not give the federal courts jurisdiction.**" (Emphasis ours.)

And in concluding its decision in the **Apex** case this Court made the following significant statement (p. 513):

> "If, without such effects on the market, we were to hold that a local factory strike, stopping production and shipment of its product interstate, violates the Sherman law, practically every strike in modern industry would be brought within the jurisdiction of the federal courts, under the Sherman Act, to remedy local law violations. The Act was plainly not intended to reach such a result, its language does not require it, and the course of our decisions precludes it. **The maintenance in our federal system of a proper distribution between state and national governments of police authority and of remedies private and public for public wrongs is of far-reaching importance. An intention to disturb the balance is not lightly to be imputed to Congress** . . ." (Emphasis ours.)

So, too, in **Hunt v. Crumboch**, 325 U. S. 821 (1945), an action against a labor organization wherein plaintiff relied upon acts alleged to be violative of the Sherman Act identical to those which would have been considered under Pennsylvania's common law, this Court stated that (p. 826) "whether the respondent's conduct amounts to an

actionable wrong subjecting them to liability for damages under Pennsylvania law is not our concern."

The Sixth Circuit, by its application of the doctrine of ancillary jurisdiction in the present case, rejected the reasoning of this Court in the **Apex** and **Crumboch** cases. At the same time and in the same opinion, however, it expressed reliance on **Apex** and **Crumboch** in dismissing the companion claim of Love and Amos Coal Company. The Sixth Circuit found that Love and Amos, because it did not have employees who were involved in the dispute (A. 116), "never had and could not assert any federally recognized cause of action or ground for recovery," and hence held that the District Court was without jurisdiction to determine the Love and Amos common law claim.

The difference in the result reached by the Sixth Circuit in the **Osborne** case and the **Love and Amos** case finds no support whatever in the **Apex** and **Crumboch** opinions. Those cases are positive that, absent diversity of citizenship, federal courts have jurisdiction to vindicate only such federal right as Congress has created. The present case and the **Meadow Creek** case establish that where a "substantial" question is raised under the Taft-Hartley Act, jurisdiction is present to dispose of a common law cause of action growing out of the same and attendant facts.

The conclusion reached by the Sixth Circuit not only conflicts with the clear analogy to be drawn from the **Apex** and **Crumboch** cases; it conflicts completely with the Fourth Circuit's decision in **United Mine Workers of America v. Patton**, 211 F. (2d) 742 (1954).[22]

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[22] The decision in the present case is also in conflict with the Sixth Circuit's decision in *Allen v. Barr*, 192 F. (2d) 150 (6th Cir. 1952). There in a suit for a patent infringement it was charged also that the defendant had infringed plaintiff's trade mark and had

In the **Patton** case where damages were considered under Section 303 and on the basis of common-law interference, the District Court approved a verdict against the union for compensatory and punitive damages. The District Court there expressly found, 114 F. Supp. 596, that punitive damages could be recovered against the union in that case inasmuch as the evidence established a common-law cause of action under the law of the Commonwealth of Virginia, which law permitted an award of punitive damages.

On appeal the Fourth Circuit, rejecting Patton's claim that **Hurn v. Oursler** was applicable,[28] reversed the District Court on the question of whether the District Court had jurisdiction to adjudicate the case under the laws of Virginia so as to award punitive damages. The Court of Appeals said (211 F. 2d 742, 749):

> "While we think that there was sufficient evidence to take the case to the jury on the question of actual damages, we think there was error in allowing the jury to award punitive damages. This is not a case brought under the diver ity jurisdiction of the federal courts to enforce a common-law liability, where we are governed by state decisions and would be bound on

engaged in unfair competition relating to the patent device and the trade mark; but because the trade mark infringement concerned a common law trade mark and there was an absence of diversity of citizenship, the Court of Appeals held the District Court to be without jurisdiction.

[28] In the *Patton* case, plaintiffs asserted in their *Patton* brief in the Fourth Circuit (p. 34) that "The evidence is such to establish not only secondary boycott as made unlawful by the Taft-Hartley law but also the common law tort of interference with the contract right . . . In such a case where the federal question, to-wit, the secondary boycott under the Taft-Hartley Act, is not plainly wanting in substance, the federal court, . . . may nevertheless retain and dispose of the case upon the non-federal ground", citing the *Hurn* case. This contention appears to be in *United Mine Workers of America v. Patton*, supra, as reported in 47 A. L. R. 2d 850, 855.

> the question of punitive damages by the decision of the Supreme Court of Appeals of Virginia in United Construction Workers v. Laburnum Const. Corp., supra, 194 Va. 872, 75 S. E. 2d 694. There is no diversity of citizenship and the plaintiffs are entitled to invoke the jurisdiction of the federal courts only because they sue on a cause of action created by a federal statute, i. e., on the cause of action created by section 303 (b) of the Labor Management Relations Act, 29 U. S. C. A., Sec. 187 (b), heretofore quoted. That section makes no provision for the recovery of punitive damages; but, on the contrary, provides expressly that the aggrieved party 'shall recover the damages by him sustained. . . .'"

On the basis of the **Patton** decision petitioners submit that there is a definite conflict of authority among the Circuits on this question. Because of this conflict and because of the manifest importance of the question of the application of the doctrine of ancillary jurisdiction to cases of this sort, under which doctrine virtually all labor disputes allegedly offensive to state common law may be brought within Federal jurisdiction, this question should be settled by this Court.

III.

The Courts of Appeals expressly approved the District Court's finding that a number of acts, though they were not shown to have been committed by an agent of the UMW or indeed by a UMW member or any particular individual, had been "inspired by union activities," and therefore were the responsibility of the UMW. Petitioners submit that this predicate for liability is in conflict with previous pronouncements of this Court in **U. S. v. White**, 322 U. S. 694 (1944), and in United Mine Workers of America v. Coronado Coal Company, 259 U. S. 344, and in Coronado Coal Company v. United Mine Workers of America, 268 U. S. 295, and of the Court of Appeals for the District

of Columbia, in **International Ladies Garment Workers Union v. N. L. R. B.**, 237 F. 2d 545 (1956). It is also in conflict with congressional intent with regard to an action under either Section 303 or under the common law. The standard of responsibility thus followed manifests the Court of Appeals' commission of error prejudicial to the UMW and sustains the necessity for the granting of certiorari herein.

The factual basis for the question here raised is set forth in that part of the "Statement of the Case" beginning at page 12 of this Petition, and we do not re-state such factual matters here. Suffice it to note that among the acts made the responsibility of the UMW is the firing of shots into the stripping pits where Osborne's men were at work by persons unknown (Finding of Fact 72, A. 72). The prejudice which naturally flows from such a finding is apparent.

A number of years ago the Third Circuit in **Republic Steel Corp. v. N. L. R. B.**, 107 F. 2d 472 (3rd Cir., 1939), made the following apt observation:

> "We think it must be conceded, however, that some disorder is unfortunately quite usual in any extensive or long drawn out strike. A strike is essentially a battle waged with economic weapons. Engaged in it are human beings whose feelings are stirred to the depths. Rising passions call forth hot words. Hot words lead to blows on the picket line. The transformation from economic to physical combat by those engaged in the contest is difficult to prevent even when cool heads direct the fight. Violence of this nature, however much it is to be regretted, must have been in the contemplation of the Congress when it provided in Sec. 13 of the Act, 29 U. S. C. A., Sec. 163, that nothing therein should be construed so as to interfere with or impede or diminish in any way the right to

strike. If this were not so the rights afforded to employees by the Act would be indeed illusory."

This language is in point here for, notwithstanding judicial recognition of the fact that disorder is apt to occur during a prolonged dispute, the essence of the Sixth Circuit's opinion is to the effect that the UMW, having been involved in a dispute in which certain disorders occurred, was necessarily responsible for other disorders, including acts of an entirely different and more reprehensible character. May such a thesis be sustained?

It is difficult to couch discussion of this problem in the ordinary language of agency for it is to be observed that with respect to the findings complained of there is no evidence which would establish that any particular individual, UMW member or otherwise, was the actor. It must be assumed however that by the deliberate use of the words "inspired by union activity" the District Court and the Court of Appeals are to be understood as saying that other members of the UMW or sympathizers with the UMW cause were the perpetrators of these acts. As such, the Sixth Circuit's reasoning is surely discordant with judicial pronouncements and congressional intent.

This Court made a most positive distinction between labor unions and union membership in **U. S. v. White**, 322 U. S. 694 (1944). It is there said (p. 702) that "actions of one individual member no more bind the Union than they bind another individual member unless there is proof that the Union authorized or ratified the acts in question". This rule was not changed by the Taft-Hartley Act. During debate on the question of agency during consideration of the Act, Senator Taft stated that ". . . I do not think there is anything in the fact that a union is an unincorporated association which would bring about a condition in law that the act of every member is necessarily charged

to the labor organization" (Legislative History of the Labor Management Relations Act, 1947, p. 1026). Again, Senator Taft declared that "the fact that a man was a member of a labor union in my opinion would be no evidence whatever to show that he was an agent" (Ibid. pp. 1204-5).

The language of this Court in the **White** case and the explanations of Senator Taft are reflected in the case of **International Ladies Garment Workers Union v. N. L. R. B.**, 237 F. 2d 545 (C. A. D. C., 1956). In that case the Court reviewed an order of the Board which denied reinstatement to strikers who had continued picketing during a violent strike and did not "repudiate" or denounce such violence which was "committed on their behalf". The Court set aside the Board's order holding that the responsibility of an individual employee for the acts of a fellow striker who is not his agent is no greater than and the same as the vicarious responsibility of a union for wrongful acts of an individual member. In denying that an individual member ratified violence which occurred during a strike by continuing to participate in the strike, the Court of Appeals said:

> "Nor can a conclusion of 'ratification' rest on the 'strikers' failure to disassociate themselves from misconduct by 'admonishment, denunciation, or public pronouncement'. Aside from the question whether these terms suggest a meaningful course of conduct that the strikers may have elected, we think they were under no obligation to disavow misconduct which they did not initiate and with which they are not shown to have been connected, directly or indirectly. United Mine Workers of America v. Coronado Coal Co., 1922, 259 U. S. 344, 395, 42 S. Ct. 570, 66 L. Ed. 975. And their silence provides no rational basis for inferring that they acquiesced in the wrongs

of others with whom no agency relationship is shown. United Electrical Workers v. National Labor Relations Board, 1955, 96 U. S. App. D. C. 46, 51, 223 F. 2d 338, 343, makes clear that such a relationship is an essential prerequisite to the inference which the Board seeks to draw from the strikers' silence."

The concept of responsibility expressed in the **Garment Workers** case is at complete variance with the reasoning of the District Court and the Court of Appeals. To attribute responsibility to a union for what its activities may have "inspired" strikes, as we think, at the roots of equal justice under law and admits almost of no limitation. The essence of the Sixth Circuit's approach is to raise suspicion to the status of fact and to base inferences upon mere speculation in a manner heretofore properly condemned. **N. L. R. B. v. Columbian Enameling & Stamping Co.**, 306 U. S. 292, 300 (1939); **N. L. R. B. v. Sun Shipbuilding & Dry Dock Company**, 135 F. 2d 15, 31 (3rd Cir. 1943).

Though the instant case was tried to the District Court without a jury, a frightening aspect of the Sixth Circuit's language lies in the reflection of what a jury might do with a charge based thereon. No one would deny, and history establishes, that unions often are met with hostile juries. Would anyone doubt how such a jury would resolve an issue of fact involving a union if it had only to determine whether that union's activities "inspired" another to the act in question? If the test of agency required by the Taft-Hartley Act is to be supplanted by, or measured by, a test of what the union has not directed, and indeed may not want, but may have "inspired", can anyone doubt the importance of the Sixth Circuit's language in the administration of the Act?

If, as we think, the Sixth Circuit's concept of agency is in conflict with the Taft-Hartley Act, it is perhaps even

in greater conflict with the standard of responsibility that Court was required to observe in its consideration of the common law cause of action. If ancillary jurisdiction permitted the adjudication of the non-federal cause of action —which petitioners deny— it must be noted that Section 6 of the Norris-LaGuardia Act, (29 U. S. C. 106)[24] makes applicable thereto a more strict standard of responsibility than obtains in an action under the Taft-Hartley Act. Section 6 directs that no labor organization shall be responsible "in any court of the United States" except upon such proof as is set forth in the section quoted below, hence its applicability in the common law phase of the instant case cannot be doubted.

This Court gave full recognition to the purpose of Section 6 in **United Brotherhood of Carpenters and Joiners v. U. S.**, 330 U. S. 395 (1947), for there in discussing the "authorization" of a member, agent, or officer which would make his acts the responsibility of the union, it is said (pp. 406-407) that "the requirement of 'authorization' restricts" the liability for such officers' or members' unlawful acts, "although such officers or members are acting within the scope of their general authority" to associations "who actually participate in the unlawful acts, except upon clear proof that the particular act charged, or acts generally of that type . . . had been expressly authorized, or necessarily followed from a granted authority . . . or was subsequently ratified . . . after actual knowledge of its occurrence."

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[24] Section 6 reads thus:

"No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof."

In 1947 Congress sought to negate the recognition given to Section 6 in the **Carpenters** case by defining the term "agent" so as to reinstate the application the common law principles of agency. Yet Congress reinstated that test only insofar as it authorized actions at law (and unfair labor practices not here involved), which is to say only for the purposes of Section 301, 29 U. S. C. 185, providing for actions on breach of contract, and Section 303. The rule of Norris-LaGuardia was not otherwise modified. The Second Circuit has noted that while Congress "expressly lifted the bar of the Norris-LaGuardia Act"[25] in certain sections of the Act specifically designated therein,[26] it rejected the contention that the Norris-LaGuardia provisions had been impliedly repealed.

There is in this case, as previously noted, no evidence identifying the perpetrators of the acts in question. In this situation, in so far as those acts constitute a part of the common law interference found by the Court of Appeals, there is manifested neither the "clear proof" of actual participation in, or actual authorization of, by the union of the wrongful conduct attributed to it, nor is there "clear proof" of ratification thereof by the defendant after actual knowledge of the wrongful conduct con-

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[25] *A. H. Bull Steamship Co. v. Seafarers' International Un.* (C. A. 2), 250 F. 2d 326. While the *Bull* case dealt with Norris-LaGuardia's Section 4 (29 U. S. C. 104), its discussion that Section 301, Taft-Hartley, "did not expressly" nor impliedly "withdraw the restrictions of the Norris-LaGuardia Act" is cogent in the case at bar since Section 303 (b) is made subject to Section 301 and the Fourth Circuit in the *Patton* case (211 F. 2d 742) has held that "common law rules with respect to liability for acts of an agent" apply in actions under Section 303. See the agency definition found in the Act's Section 301 (e) (29 U. S. C. § 185 (e)). Cf. *H. L. Mead, Inc. v. Int. Bro. of Teamsters* (C. A. 1), 217 F. 2d 46, 9.

[26] Sections 101 (b), 178 (b) and 302 (e) of Taft-Hartley (29 U. S. C. 160 (b), 178 (b), and 180 (e)). See also 93 Cong. Rec. 7001; Legislative History of the Labor Management Relations Act, 1947, Vol. 2, 1552, 1622.

plained of, as required as a basis for responsibility by Section 6 of the Norris-LaGuardia Act.

The requirements of the Norris-LaGuardia Act, as such requirements apply to a non Taft Hartley cause of action determined by a federal court, is added reason why the vague standard of responsibility adopted by the Court of Appeals ought not to be permitted to stand. Clearly, the obviously erroneous judgment resulting from the reasoning adopted by the Court of Appeals should be reversed through review by certiorari sought herein.

Petitioners assert that unless corrected, the decision of the District Court and the Sixth Circuit will have established, both as to actions under Section 303 and the common law, a new and unwarranted standard for determining a labor union's responsibility, and it will have done so despite legal precedent to the contrary.

## CONCLUSION

Where, as here, the judgment of $185,000.00 of compensatory damages and $50,000.00 of punitive damages has resulted from the Sixth Circuit's holding of a Section 303 violation which is in conflict with Congressional intent, and with a decision of the District of Columbia Circuit; and the award of punitive damages results from the Sixth Circuit's approval of ancillary jurisdiction of a non-federal, state common law claim which is in opposition to Congressional intent and conflicts with enunciations of this Court and a decision of the Fourth Circuit; and liability is predicated upon an erroneous test of a labor union's responsibility in conflict with decisions of this Court and Federal Courts of Appeals; and because the errors of the Sixth Circuit herein will serve as a precedent in current litigation involving approximately $25,000,000.00 in District Courts in that same Judicial

Circuit; and for the reasons set forth herein, petitioners, and each of them, pray that this Petition for Writ of Certiorari be granted, and that a writ issue to review the said decision and judgment of the United States Court of Appeals for the Sixth Circuit entered on June 7, 1960.

Respectfully submitted,

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